

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA

v.

VINSON MANGOS,

Defendant

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Criminal No. 96-11-P-H
(Civil No. 98-90-P-H)

***RECOMMENDED DECISION ON DEFENDANT’S MOTION
FOR COLLATERAL RELIEF UNDER 28 U.S.C. § 2255***

Vinson Mangos, appearing *pro se*, moves this court to correct his sentence pursuant to 28 U.S.C. § 2255. Mangos was sentenced to 88 months imprisonment upon his plea of guilty to a charge of transferring a firearm knowing that it would be used to commit a drug trafficking crime, in violation of 18 U.S.C. § 924(h). Judgment (Docket No. 40) at 1-2. He contends that the court erred in determining his criminal history in the course of imposing sentence and that he has not been properly credited with time served. Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (“Petition”) (Docket No. 48) at 5.

A section 2255 motion may be dismissed without an evidentiary hearing if the “allegations, accepted as true, would not entitle the petitioner to relief, or if the allegations cannot be accepted as true because ‘they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact.’” *Dziurgot v. Luther*, 897 F.2d 1222, 1225 (1st Cir. 1990) (citations omitted). In this instance, I find that the allegations, accepted as true, would not entitle Mangos to relief. Accordingly, I recommend that the motion be denied without an evidentiary hearing.

I. Background

As the First Circuit noted on Mangos's direct appeal from his sentence, his guilty plea arose in the context of a three-count indictment, two counts of which were dismissed when he entered his plea to the third. *United States v. Mangos*, 134 F.3d 460, 462 (1st Cir. 1998).

Mangos and three others . . . attempted to rob John Collins, whom they believed was selling crack cocaine from his trailer. In doing so, Mangos carried his 20-gauge shotgun with a pistol grip when he [and the others] entered Collins's trailer. This robbery attempt was aborted.

Four days later Mangos declined to join [the others] in a second effort to rob Collins, but allowed [one of the three others] to use his shotgun, knowing that [he] planned to use it in the robbery. Collins fled through a window but the robbers injured Collins's girlfriend, Jennifer Hanscomb. The robbers found no drugs and left the trailer.

Id. This court, in determining Mangos's criminal history score for purposes of application of the United States Sentencing Commission Guidelines, added two points for a state sentence of incarceration in lieu of fines for operating a vehicle under the influence of alcohol. *Id.* at 463.

Mangos's direct appeal raised four issues:

(1) his earlier assault conviction in a Massachusetts court was not a crime of violence under the sentencing guidelines; (2) the district court misinterpreted the guidelines in its treatment of this issue; (3) the district court erred as a matter of law in not departing downward because of the overcounting of prior offenses; and (4) in not granting him a role reduction because he was the least culpable of the various participants.

Id. at 462. The First Circuit affirmed the sentence. *Id.* at 466.

II. Discussion

In connection with his first claim, Mangos argues that the court erred in assessing two

criminal history points for a sentence of 77 days imposed in state court upon his failure to pay fines assessed upon his guilty pleas to charges of operating a motion vehicle under the influence and operating after suspension, because he ultimately paid the fines due and thereby avoided serving the sentence. 2255 Memorandum, attached to Petition, at 2-3 and Exhs. A & B. He contends that this action by the court violated his constitutional right to due process, because it resulted in a criminal history category of V instead of IV, thereby increasing his potential sentence. *Id.* In support of his position, Mangos cites case law involving only direct appeals of sentences, not collateral attacks under section 2255.

This distinction is fatal to Mangos's claim. Alleged errors in the application of the sentencing guidelines are not cognizable on collateral attack under section 2255. *Knight v. United States*, 37 F.3d 769, 772-73 (1st Cir. 1994). Mangos does not contend that the alleged errors constituted a miscarriage of justice, the only basis for exception from this rule, *id.* at 773, nor could he do so in the absence of a claim of actual innocence, *Burks v. Dubois*, 55 F.3d 712, 717 (1st Cir. 1995), which he does not make. Such a claim should be raised on direct appeal, and Mangos has failed to show cause for his failure to do so. *Knight*, 37 F.3d at 774. Under the circumstances, Mangos cannot raise the claim on collateral attack. *Id.*

Mangos's second claim for relief is based on an assertion that the Bureau of Prisons has credited him with only 268 days for time served before his commitment pursuant to his sentence in this matter, while he is entitled to 319 days. 2255 Memorandum at 4. Mangos correctly notes that he has a right under 18 U.S.C. § 3585(b) to receive credit for certain time spent in detention before his sentence begins, citing *United States v. Wilson*, 503 U.S. 329, 330 (1992). However, this court lacks jurisdiction to entertain such claims. A challenge to the credits provided to a prisoner against

the term of his sentence addresses the execution of that sentence. *United States v. Gabor*, 905 F.2d 76, 77-78 (5th Cir. 1990). Section 2255 does not grant jurisdiction over a post-conviction claim attacking the execution rather than the imposition or illegality of a sentence. *United States v. DiRusso*, 535 F.2d 673, 674 (1st Cir. 1976). Such claims must be brought under 28 U.S.C. § 2241 in the federal district court having jurisdiction over the place where the prisoner is in custody. *Id.* at 675-76. Mangos is in custody in Pennsylvania, Petition at 1, and this court has no jurisdiction outside the boundaries of the state of Maine.

III. Conclusion

For the foregoing reasons, I recommend that the motion to vacate, set aside or correct the sentence be **DENIED** without an evidentiary hearing.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 24th day of June, 1998.

*David M. Cohen
United States Magistrate Judge*